

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BARKSDALE SCHOOL PORTRAITS, LLC,)
d/b/a HOCKMEYER WITH BARKSDALE, and)
BSP NEW ENGLAND, LLC d/b/a HOCKMEYER)
WITH BARKSDALE,)

Plaintiffs,)

v.)

ELIZABETH HOCKMEYER WILLIAMS, and)
E-LLUMINATIONS,)

Defendants.)

Civil Action No.
1:20-cv-11393-IT

BEFORE THE HONORABLE INDIRA TALWANI, DISTRICT JUDGE

MOTION HEARING

Thursday, June 3, 2021
9:57 a.m.

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts

Robert W. Paschal, RMR, CRR
Official Court Reporter
rwp.reporter@gmail.com

A P P E A R A N C E S

On behalf of the Plaintiffs:

HOMANSPECK, LLC
BY: MICHAEL D. HOMANS
134 North Wayne Avenue
Suite 300
Wayne, PA 19087
(215) 419-7463
mhomans@homanspeck.com

RUBIN AND RUDMAN LLP
BY: JEFFREY A. DRETTLER
53 State Street
Boston, MA 02109
(617) 330-7000
jdretler@rubinrudman.com

On behalf of the Defendants:

O'HAGAN MEYER PLLC
BY: JEFFREY M. ROSIN
111 Huntington Avenue
Suite 2860
Boston, MA 02199
(617) 843-6800
jrosin@ohaganmeyer.com

P R O C E E D I N G S

(In open court at 9:57 a.m.)

THE DEPUTY CLERK: United States District Court is now in session, the Honorable Judge Indira Talwani presiding.

This is Case Number 20-cv-11393, Barksdale School Portraits LLC versus Hockmeyer Williams, et al. Will counsel please identify themselves on the record.

MR. HOMANS: Michael Homans on behalf of the plaintiff, Barksdale School Portraits, BSP New England, and the individual counterclaim defendants.

THE COURT: Good morning.

MR. DRETLE: Good morning, Your Honor. Jeff Dretler, co-counsel with Attorney Homans.

THE COURT: Good morning.

MR. ROSIN: Good morning, Your Honor. Jeffrey Rosin for the defendants and counterclaimants.

THE COURT: Good morning.

So in accordance with CDC guidelines, if you are fully vaccinated, which means two weeks past your last vaccination, the final vaccination, you may remove your mask if you choose to do so. You may keep it on if you're more comfortable with that.

So we are here on the motion for sanctions brought by the plaintiffs, and that's motion for sanctions 40 -- Docket 46. And I have reviewed the papers. And I would like

1 to sort of separate out this conversation into two parts.

2 One, is it -- I think there is a question as to --
3 or I'd like to make sure my understanding is correct that
4 there is no dispute that Attorney Rosin made the statements
5 that he is accused of making and, assuming that's the case,
6 to then move on to the question of what are the consequences
7 of that.

8 So let me start with that first thing. Do I
9 understand correctly, Mr. Rosin, that you do not dispute that
10 those statements were made?

11 MR. ROSIN: Your Honor, there are certain
12 statements that I don't dispute; however, the overall context
13 of the statements and how they were made is part of what I do
14 dispute.

15 THE COURT: Okay. But I'm trying to divide this up
16 to into two pieces. So my first question is simply, as to
17 the statements, there's no dispute about that, correct?

18 MR. ROSIN: That's not fully correct, Your Honor.
19 Certain of the statements, yes. The transcript speaks for
20 itself, and they are -- they are made. But many of the
21 statements were either potentially not mine or were said in
22 the context of an objection or a comment to Attorney Homans.

23 So in that sense, anything, of course, that the
24 transcript reflects me being -- saying, other than the one
25 that's in error in the initial transcript, would be what I

1 would defer to, Your Honor.

2 THE COURT: Okay. So let me just try to figure out
3 exactly what you said there. I was hoping that by having a
4 neutral transcript made, we could avoid disputes. However,
5 the -- I'm perhaps spoiled by the use of court reporters who
6 actually carefully go through things. And I found the
7 transcript, which at times had the wrong individual and at
8 times had things that clearly were erroneous, lacked some
9 reliability.

10 So that got me back to the question of, do I need
11 to listen to each expression in the video? And so I -- to
12 some degree, I was trying to get my direction from your
13 papers. And from your papers, I'm not -- I understand that
14 you give context to lots of things, but the actual words out
15 of your mouth, I wasn't clear that you actually disagreed
16 with any as originally presented by the plaintiff.

17 MR. ROSIN: And, Your Honor, there are a few that
18 are not reflected accurately in the motion. There are a few
19 that I do not think were mine. There -- I haven't -- you
20 know, I guess my general viewpoint was, look, you know, I
21 know that this was a difficult deposition. I know that there
22 were times I muttered. Okay? So I guess I don't deny
23 muttering generally sometimes, and I don't deny that that was
24 not perfect lawyering and something I was not supposed to do.

25 But there -- if I go to each of the statements that

1 are alleged, some of them do not accurately reflect what is
2 in there. And I think my sur-reply -- thank you, Your Honor,
3 for accepting that. But I think my sur-reply addresses this.
4 For example, I do not recall Item 23, I believe, where it's
5 alleged I said that Ms. Sheridan was a swear word. I do not
6 recall that at all.

7 I do recall substantial testimony about the
8 actual -- that actual term being a part of questions and
9 answers in that part of the record. And so I haven't drilled
10 down, but I accept that I made mutterings when that was not
11 the right thing to do as a lawyer.

12 THE COURT: Okay. So I think there are -- from
13 what you've said, I may need to go back and drill down to
14 specific -- some of the specific items, but certainly as to
15 the bulk of them, there is no dispute that you made these
16 statements?

17 MR. ROSIN: Well, okay, Your Honor. To the extent
18 the transcript is me making a statement, of course, I
19 definitely don't dispute that.

20 THE COURT: Well, the problem is the transcript is
21 me making the statement, and I'm just trying to figure out if
22 you actually dispute it or whether I need to try to figure
23 out what I'm using as a reliable matter.

24 I do think as -- you know, as a technical matter in
25 determining a record, what a court reporter takes down as

1 correct is the record even if someone has been sitting on the
2 side taping it on their iPhone. That's the record. Where
3 you have a noticed deposition, you have two records. One is
4 this stenography, the stenographic record taken by that
5 stenographer, and the second is the video record taken by the
6 videographer; and so you have both.

7 I was trying to reduce the videography to a written
8 record so I didn't have to replay and replay and replay. And
9 I don't feel like this third record we've created has any
10 indicia of reliability, unfortunately.

11 So now I'm simply asking you the question as to
12 whether or not -- not what does the transcript show. I'm
13 just asking you the question, is do you dispute the
14 statements that plaintiff has listed in your brief? And I
15 think what you're saying is that, as to a few of them, as to
16 some of them, you do and that I can find in your sur-reply.

17 And so then my follow-up question to you was, so we
18 can now move forward, but do you agree that the majority of
19 these statements, you did make these statements? And then we
20 need to figure out what happens and what's the context and
21 what I'm going to do about that.

22 MR. ROSIN: Well, I guess, put that way,
23 Your Honor, I've listened to this transcript four times very
24 closely, because a lot of it, when I first saw this, I
25 couldn't recall. But, of course, I did know that I muttered

1 sometimes.

2 And so, you know, for example, there's one item,
3 35, where I'm alleged to have said something. And, you know,
4 the -- yes, I said it. The sound was off in our room. We
5 couldn't hear Attorney Homans, and it was asked and answered
6 already, and I should not have been speaking out of turn.
7 That was wrong. But it was not what it's painted to be.

8 So I guess, when you say, Your Honor, do you -- do
9 you dispute the statements, I guess there's both -- there's
10 both a no and a context in there that I -- that I would give
11 Your Honor as the answer.

12 THE COURT: Okay. I'm taking that as a no, and now
13 we can move to the context --

14 MR. ROSIN: Thank you, Your Honor.

15 THE COURT: -- trying to separate this out. And so
16 the circumstance that I understand that I have in front of me
17 is that these statements that you refer to as "mutterings,"
18 but these words were made, and now the question is what
19 happens in light of that? And your arguments are -- it seems
20 to me are primarily directed to why I should not take action
21 against your client.

22 But I'd like to start first with the question of
23 whether I need to take action as to you.

24 MR. ROSIN: Thank you, Your Honor. And I'm
25 prepared, Your Honor, for whatever Your Honor decides is the

1 appropriate action to me. I would actually, though, ask
2 Your Honor to recognize the following context.

3 The -- my client's psychological and emotional and
4 physical state was in a place where I've never been with a
5 client, and she almost didn't make it to the deposition that
6 day. She had had no food in her system and didn't have food
7 in her system and refused to take any through the day and
8 would only drink water to get herself through the day.

9 She was hospitalized the night afterwards. We were
10 met in the beginning with what is set forth in our sur-reply
11 and what Your Honor can hear in the first 30 minutes of the
12 video as a very provocative and agitating set of questions.
13 We did try to move for protective order and instruct her not
14 to answer on one of them. Looking back, I should have moved
15 for a protective order on the entire day.

16 But I knew that my client needed to get through the
17 day. We had been anticipating the day for a month. She was
18 just off of vacation. She is a photographer. The May season
19 is when she's going to be busy and need to focus on making
20 money. We needed to get this done at the end of April and
21 hopefully in one day, you know, come the high water.

22 So I love this client. I care a lot about her. I
23 care a lot about her husband as well. I'm wrapped up in what
24 she's endured, and I'm watching what she's enduring. And
25 it's very hard to watch. And I know what she's told me she

1 endured for three years, and that's very hard as well.

2 I have reached out to fellow counsel outside my
3 firm considering that perhaps I am too emotionally wrapped up
4 in this case and need co-counsel or substitute counsel to
5 take it from here. My client is suffering, and I've taken on
6 her emotions. And that's something that I'm willing to pay
7 whatever price Your Honor thinks is appropriate.

8 But I look at that deposition, 32 hours of it,
9 8 hours four times over, and I say, did -- did the other side
10 get a full and fair deposition? Did I truly interfere with
11 that? Did I truly interfere in any way with them getting her
12 truthful and credible answers and getting through that day?
13 And in my defense, Your Honor, I feel like I did not. I did
14 not.

15 I helped my client and helped her get through the
16 day, and I was not a perfect defender there, by any stretch,
17 but I ask that Your Honor consider that.

18 THE COURT: So I think the problem I'm having with
19 your response to this whole matter is that, even if I were to
20 accept everything that you're stating recording your client's
21 mental state and difficulties and all of the -- how your
22 motives may not have been misplaced, even if I were to accept
23 all of that, what I'm having a hard time understanding
24 here -- because you're obviously an experienced litigator and
25 an experienced lawyer.

1 And I don't see any acknowledgment from you on how
2 what you may contend you do to help her has, in fact, gravely
3 harmed the matter, where you have placed her in a position in
4 front -- you may believe in your client. I certainly have
5 been there where you believe in your client. I understand
6 that. But this is a case where a neutral person will
7 ultimately -- whether it's a jury or me -- will ultimately be
8 making decisions about this case.

9 And to not recognize that the steps you are taking,
10 purportedly to protect her, are damaging her suggests to me
11 that, you know, either you're so invested that you no longer
12 have clarity in it, or there's other things going on in your
13 life that are interfering with your judgment.

14 But I'm -- I'm somewhat speechless at your apparent
15 lack of recognition of what you're suggesting you do in
16 helping her, to not realize how incredibly harmful it is. I
17 mean, as I go here, if I have a lawyer who is whispering
18 behind their mask to their client, even if what she said was
19 the truth, how do I look at every pleading and every paper
20 without a huge question mark?

21 MR. ROSIN: Your Honor, and I think that when I
22 said that I have talked to substitute counsel, I was -- that
23 was what I intended to indicate, is that I do realize that my
24 being wrapped up in her case emotionally is not the best
25 thing for her. And I do realize that, Your Honor.

1 THE COURT: So why -- is there any reason, from
2 your point of view -- and I will then let your opposing
3 counsel address this -- that the appropriate remedy here
4 would be an order directing you to withdraw from this case
5 and making a referral to the Bar to determine what's going on
6 here?

7 Because if there are other matters, I certainly
8 don't want to be doing this in a public court proceeding. If
9 there are other matters that are going on that are affecting
10 you individually, this is of concern. But so I have you
11 withdraw from this. I make the referral there.

12 And then, with regard to your client, allow that to
13 the extent, just like you can cross-examine someone with
14 their deposition, the plaintiffs will be able to play those
15 portions of the tape if they want to use that to suggest at
16 trial that her -- to challenge her credibility? Why wouldn't
17 that be the appropriate remedy here?

18 MR. ROSIN: Your Honor, I'd be prepared to accept
19 that if that is Your Honor's view of the appropriate remedy.
20 I do care for this client. I do think and believe in her
21 case. I know that there is a lot of trust in me.

22 I know that I have tainted Your Honor's view of
23 that situation, and I think that I would definitely accept
24 whatever Your Honor views as appropriate, and my clients
25 would learn to move on from that. They had a lawyer in this

1 matter before me, and that is the lawyer that I'm speaking
2 with and his firm about replacing me already.

3 THE COURT: Let me hear from plaintiffs.

4 MR. HOMANS: Your Honor, thank you.

5 It's obviously not a pleasant situation for any of
6 us to be here. And I certainly, in my 26 years of practice,
7 have never seen anything that comes close. And like you,
8 I'm -- I was speechless when I found out the level that this
9 occurred.

10 And I do want to note, you know, Mr. Rosin is an
11 aggressive litigator; but he has been calm, cool, and
12 calculated throughout this. He has not been an emotional
13 litigant -- or, you know, counsel.

14 You know, I specifically asked him during the
15 deposition, and I think it's at page 16 of the original
16 transcript, you know, "Please don't confer with your client
17 during the break, you know, as to the substance of her
18 testimony." And he agreed, of course not. He'll have no
19 problem with that.

20 He knows the rules. He's practiced 25 years. He's
21 the managing partner of the Boston office of his 140-lawyer
22 firm. And like you, I don't understand what happened here,
23 but there can be no mistake that this was wrong and that this
24 violated multiple rules and requirements.

25 With regard to -- if there is any dispute as to the

1 substance, I agree with Your Honor. You have two records.
2 You have the actual video recording, which I think is the
3 best evidence. And while I regret that Your Honor or your
4 staff may have to review that video recording, you know, we
5 have pinpointed the spots, and I do think that is a better
6 record than the transcript that was produced, you know, with
7 all respect to the independent transcriptionist.

8 THE COURT: Yes. Recommendation for any similar
9 attempts, what people do outside of the legal profession
10 doesn't measure up to the accuracy of our certified
11 reporters. And I regret not directing you to use a court
12 certified reporter rather than -- I mean, I don't know
13 whether this came off of, you know, a computer program for
14 however -- for however it was done.

15 MR. HOMANS: Your Honor, yeah. We don't know. We
16 left it to the two court reporting services, and they
17 mutually agreed. I think, actually, Mr. Rosin's court
18 reporter suggested this one, and the court reporter service
19 we used looked at them and said, yeah, they looked qualified.
20 And we understand they did understand what they're doing, but
21 I think they also sensed an urgency, and they have not
22 produced the best work product.

23 THE COURT: I think the -- I think the issue that I
24 do need you to address is that the question of sanctions as
25 to the plaintiff -- sorry -- as to the defendant personally,

1 removing her case, judgment, et cetera, it seems to me
2 detracts and minimizes the problem here, which is the conduct
3 of counsel and that, while the witness was complicit,
4 obviously, she is also represented by counsel who is in a
5 sense telling her what to do.

6 And so it seems to me that the -- to sanction her
7 beyond removing her lawyer and allowing you to use the video
8 as to those portions if it came up at trial, it would seem
9 that any greater sanction as to her would require me to go
10 into findings as to the underlying allegations that both
11 sides are throwing back and forth, that -- I don't think this
12 is the appropriate forum to do.

13 MR. HOMANS: Your Honor, I understand that
14 position. I guess I would say, as we try to highlight in the
15 motion and memorandum of law, there have been repeated
16 incidents of, you know -- I think, cannot be concluded to be
17 anything other than willful dishonesty and willful wrongful
18 conduct by Elizabeth Hockmeyer Williams. They're documented,
19 and they can be demonstrated.

20 And then when she's confronted with those, you
21 know, documented incidents, she either -- "I don't recall,"
22 you know, either just totally claims no knowledge as to who
23 she sent, you know, this May 12th e-mail to about what -- you
24 know, on May 12th, the day she sends the e-mail to all
25 Barksdale's customers, she and her husband are texting back

1 and forth, "I'm downloading everything. I've downloaded all
2 your stuff. I'm downloading all my stuff. Next we'll spend
3 all week downloading other stuff," you know, from Barksdale's
4 systems.

5 THE COURT: So I understand that you feel strongly
6 about the -- that the facts here support your side. I'm
7 uncomfortable with both sides asking me to delve into those
8 facts in this context. I mean, what I'm -- what I am
9 addressing here on this motion is what happened during this
10 deposition.

11 And it's a question of the context and the forum.
12 If -- you know, is it more expensive to proceed and have
13 factual determinations determined at the appropriate time
14 under the Rules of Civil Procedure? Absolutely. But is this
15 a shortcut to get there? I don't -- I don't think that
16 presents -- I think the question that's presented here is the
17 question of what happened on that day.

18 MR. HOMANS: And I guess the only other things I'll
19 note on that, Your Honor -- you know, there is this
20 representation now that she was highly fragile and in an
21 emotional state. She was -- she was pugnacious and, you
22 know, said, "I can go all day," during the deposition. She
23 would say -- you know, she would laugh if she thought I asked
24 an awkward question.

25 She -- she states, on the mask -- I asked that the

1 mask be removed. She said, "Well, I'm high risk." You know,
2 she drives into Boston, sits in a conference with two other
3 people all day for the deposition, you know, close by. She's
4 just back from a vacation to Florida for a week.

5 So, you know, I think all of this suggests to me
6 willful misconduct, a willful scheme to wear the mask to
7 cover up so that Mr. Rosin can feed her lines when she's
8 stuck or she needs help. And I think that's what happened.

9 And we cited cases, I believe, at pages 11 and 14
10 in which the sanction of dismissal does occur when there is
11 evidence that the party is complicit in the wrongdoing, which
12 I think there is evidence here, that that -- the entire claim
13 can be dismissed and that party should be sanctioned also.

14 I understand. I hear you, Your Honor. I mean, if
15 your counsel is suggesting you do this, that's a high burden
16 to place on a party, you know, who -- she's not just a
17 photographer. I mean, she was -- she was operating officer
18 of this business for the past 15 years.

19 But I understand the position, and I just think
20 there is possibly consideration to be made that sanctions
21 should be against her, you know, and we can talk about
22 various levels of sanctions, what they should be and whether
23 they should be full dismissal. But I don't think she's an
24 innocent party here, I guess, is my point.

25 THE COURT: Mr. Rosin, do you want to address the

1 issue of whose idea it was to have communications behind your
2 masks --

3 MR. ROSIN: Your Honor --

4 THE COURT: -- to keep your masks on during the
5 proceeding, to be in one room during the deposition?

6 I -- you know, I have to say, I think part of what
7 was so distressing about this motion -- and, again, your --
8 the fact that you're -- you know, you've built a respected
9 practice is all the more troubling here -- is that we're all
10 working through this pandemic. There's a lot of problems,
11 and how do we do this? You can see in this courtroom. We're
12 all making all kinds of efforts to deal with this.

13 And the idea that this deposition format, instead
14 of being, "How do we make our way through during a pandemic
15 to keep justice going," became an opportunity that you would
16 never have tried to do in -- sitting in the same room or here
17 in the courtroom. And imagine she's there. It will be very,
18 very stressful. You would never have thought, here, to be
19 whispering her answers or even to be muttering under your
20 breath.

21 MR. ROSIN: And I think, Your Honor, I put in my
22 opposition that there's nothing premeditated. It just
23 happened that, you know, in the course of the -- what I saw
24 as a very abusive line of questioning and repetitive
25 questions that, you know, the agitation and the arguing, and

1 they keep coming back to the same issue and asking it again
2 and asking it in a different way and asking it in another way
3 now, that there were moments of frustration when I -- you
4 know, "Just say you don't know. You know, just -- can we get
5 on with this," you know?

6 THE COURT: But you're an experienced attorney, and
7 you knew I was here in the courthouse that day, right?

8 MR. ROSIN: I know, Your Honor. I know. And I
9 wish that I had moved for a protective order and called
10 Your Honor a number of times. In the moment, I was weighing
11 needing to get through the day and do it in one day and
12 really that being the priority.

13 And, you know -- and there were times -- and it's
14 after the third hour -- where I'm objecting while I'm still
15 on mute. It's a clear objection. And I know that my voice
16 is being heard through Ms. Williams's microphone, because
17 every time I went off mute to object, there was that tin-like
18 echo in the room.

19 And I'm not IT. My one officer manager that's in
20 there with me and my one contract lawyer who is in her office
21 in the other room, none of us are IT. We just know that for
22 some reason, every time I go off mute, the whole thing
23 echoes. And so it just sort of happened after the
24 frustrations of the day.

25 THE COURT: Was this the first deposition of this

1 case?

2 MR. ROSIN: It was, Your Honor. And it -- the
3 first time I've ever done one live in my office during the
4 COVID era on Zoom with the witness in the room. I've never
5 even had a witness in the other room.

6 THE COURT: And you have how large an office? Has
7 anyone else handled depositions? I mean, I'm just
8 speechless, because we have been on Zoom since last March.

9 MR. ROSIN: Well, we've always --

10 THE COURT: And, you know, we are dealing with
11 these issues with individuals in a lot of different settings.
12 We've done our criminal proceedings. I'm somewhat speech- --
13 so, I mean, your defense here is you had no idea this is how
14 to do a deposition?

15 MR. ROSIN: No, Your Honor. I think there have
16 been times where every lawyer is in their individual room and
17 there's not the sound issue.

18 THE COURT: Right.

19 MR. ROSIN: This client specifically said, "I want
20 you in there with me. I need you in there with me. I can't
21 do this alone." Okay?

22 So I think that I -- "Okay. I'll be in there with
23 you," but then there was this sound issue. And I thought,
24 "Okay. I don't have to say anything other than the
25 occasional object." Then as I watched my --

1 THE COURT: How can you do a deposition and not --
2 I mean, you're telling me now these questions were compound,
3 et cetera, but you made no objection during the time; or when
4 you tried to object quietly, it clearly wasn't being picked
5 up by the court reporter, so you knew that.

6 MR. ROSIN: Well, no, there was a time I knew that
7 my objections were being heard through her microphone. And
8 so that was at the third hour, right around 3:08. And so,
9 like, it just happened, Judge, and it just -- it's a bad
10 consequence, a bad confluence of events. I own my
11 responsibility in it.

12 And it was not any kind of setup or anything like
13 that to try to, you know, do something untoward. It was just
14 the stresses of the day, the situation we were in, the
15 repetitive questioning, the need to get through the day.
16 Ultimately what we weighed was whatever happens in the next
17 seven hours -- and that's all he has, is seven -- whatever
18 happens, we're going to endure it. And in that mix,
19 Your Honor, there were some mistakes, and we -- that's all I
20 can say.

21 THE COURT: Okay. I will go back and make sure at
22 least some of the key things I have listened to on the video.
23 I have, so far, stuck to the transcripts.

24 But my intention here, the order I anticipate
25 issuing will require you to withdraw. And there needs to be

1 substitute counsel appearing promptly or at least as to the
2 entity. Ms. Hockmeyer, obviously -- or Ms. Williams,
3 obviously, has a right to appear pro se if she isn't able to
4 find substitute counsel. But I am going to -- I will need
5 there to be substitute counsel for E-lluminations because
6 they cannot appear pro se.

7 Do you anticipate that substitute counsel will, in
8 fact, be filing an appearance and I don't need to worry about
9 this or --

10 MR. ROSIN: Your Honor, I will place a phone call
11 as soon as we leave the court. It is someone I have spoken
12 to already, and I know that they said they're willing.
13 They're in. Obviously, Ms. Williams needs to re-meet that
14 person and be agreeable to, and E-lluminations.

15 Your Honor, there is a sister case, brother case.
16 It's Mr. Williams', Jeffrey Williams' case before Your Honor.
17 I would ask that I be permitted to continue on his case.

18 THE COURT: I don't see how. The discovery was
19 consolidated in this case, correct? I understand this motion
20 was only filed here, but this was consolidated discovery.
21 Her deposition factors into that case as well, correct?

22 I also -- I mean, literally -- I am -- I am
23 actually -- I maybe should say this even in stronger terms.
24 You are not helping your clients here by your conduct. This
25 is a terrible situation that somebody has to deal with

1 professionally after you've gone down this thing.

2 I don't know what -- how much of your clients'
3 medical and marital information was on the public record
4 before you filed your oppositions to these motions, but
5 you've put it all out there now.

6 I don't think that there is any scenario where it
7 is appropriate -- I think there's a conflict of interest
8 here. I think you need to figuring out how to take steps so
9 this doesn't have repercussions far beyond this case, because
10 I will be making a referral to the Bar. I can't not. This
11 is so -- so entirely inappropriate.

12 So you're going to -- I think what I will do is,
13 just to ensure that we don't have a complete mess on getting
14 notice out to your client, I will direct you to withdraw from
15 this case but give you a week to do so. And hopefully
16 substitute counsel will file a notice of appearance in the
17 meantime.

18 I will make a referral to the Bar and have them
19 address what happened here or not. I really -- I think
20 that's probably the appropriate place, and I do -- I do have
21 concern that this doesn't -- this seems to be a type of thing
22 sort of beyond what someone would normally do to protect
23 their clients along the way, and to not understand that the
24 most important thing isn't getting through a seven-hour
25 deposition suggests you may not have been in an appropriate

1 frame of mind as you were -- as you were considering this.

2 And as I said, I intend to order the video -- that
3 the video deposition portions may be used as appropriate for
4 that particular question, if it comes up, just the way you
5 could use a conflicting answer in a deposition. So, in that
6 sense, it would be available for impeachment.

7 And I don't -- I don't want to create a second
8 fight about fees, but I will entertain a reasonable request
9 for the defendants' [sic] fees in bringing this motion. So
10 I'll go back and take one last look at the video, but that's
11 my plan here.

12 There are pending -- there is a pending close of
13 discovery and appending motion to compel, and I am not
14 prepared to address the merits of it. But just so I
15 understand what is open with regard to discovery in this
16 transition, but for these matters that are at issue in the
17 motion to compel, is discovery complete?

18 MR. ROSIN: Your Honor, we had planned, if we
19 stayed in the case, a few other depositions. And one of our
20 requests in the motion to compel was for the continued
21 depositions, that we claim we should have had certain
22 documents.

23 THE COURT: So I understand that there's a motion
24 that says there are documents and continued depositions. I
25 understand that. So putting that to the side, are there

1 other discovery and depositions that are still open?

2 MR. ROSIN: There were two that Ms. Williams
3 wanted. They are the -- names are Mo Ehtesham and Brad Ells.

4 THE COURT: And have those been noticed?

5 MR. ROSIN: One of them was, but we voluntarily
6 took it off calendar because there are documents that we had
7 wanted. Mr. Ells -- we hadn't had a date yet, but we wanted
8 the same set of documents for Mr. Ells. And then we had
9 contemplated a Rule 30(b) (6) to get into some of the alleged
10 lost revenues.

11 THE COURT: And has that been noticed or discussed
12 with opposing counsel?

13 MR. ROSIN: It's been referenced, but not noticed
14 or discussed. The two -- the first two have been discussed
15 that -- the 30(b) (6) has been referenced, but not discussed.

16 MR. HOMANS: And, Your Honor, I think we referenced
17 in our motion, our response to the motion to compel, that we,
18 you know, kind of request, as part of this motion for
19 sanctions, a stay of discovery while this was worked out
20 because I did understand this might put a lot of things in
21 flux.

22 There are some key documents we would move to
23 compel and also probably taking two to four depositions,
24 which have not been noticed yet.

25 THE COURT: Okay. So I am going to stay discovery.

1 I would like -- because I don't want to have new counsel come
2 in and have a request to reopen the whole -- the whole
3 discovery matter. Where I understood we were is that you
4 came in -- prior to this, these two motions, what I
5 understood was that there was a motion to extend discovery by
6 one month based on the need to do additional depositions.

7 Is that -- is that correct that that was the basis,
8 was that there was -- that you asked to extend the time to
9 complete depositions or to take depositions?

10 MR. HOMANS: Yes, Your Honor.

11 THE COURT: Okay. So written discovery, except as
12 may be subject to a motion as -- except as may come forward
13 in a motion to compel, is closed. And then with regard to
14 any further depositions in addition, I understand there's a
15 group that defendant contends needs to be reopened, and
16 that's briefed, and I will look at that.

17 But other than those matters, I'd like you to
18 confer and file a joint statement as to whether there's an
19 agreement on depositions that need to go forward. And if
20 there is not agreement, if there are additional people that
21 there's any dispute about, or the 30(b)(6), if there's any
22 dispute about it, a brief statement as to why notice for
23 deposition of those people would be appropriate at this time
24 so that I know -- so I have a concrete universe of what we're
25 dealing with before we bring new counsel in.

1 MR. ROSIN: Thank you, Your Honor.

2 I was going to ask for two weeks instead of one
3 only because -- just to get new counsel up to speed. But I
4 would defer, Your Honor, if one week is all you'll give me.

5 THE COURT: Well, what I'm -- what I don't -- you
6 know, any time a new attorney puts their eyes on something,
7 no matter how excellent a job you've done, they may well say,
8 "Well, if it was me, I would have asked for something
9 different." I don't want to go down that road. We've had
10 discovery. Competent counsel have worked on this case, and
11 you sort of have the universe.

12 So written discovery is closed other than you have
13 a pending motion and plaintiffs are intending to file a
14 motion to compel. So written discovery is closed.

15 With regard to the depositions, I suppose two weeks
16 is fine, but I'm not looking for new names, right? What I'm
17 looking for is the parties came together and said, "Let's get
18 an extra month." It wasn't really so that everyone could go
19 back and say, "Let's come up with a list of ten new witnesses
20 to depose."

21 So I'll give you the two weeks, but I am -- I am
22 hoping that the parties have an understanding of who the
23 witnesses generally are here and that this isn't going to be
24 a disputed matter.

25 MR. ROSIN: Thank you, Your Honor.

1 THE COURT: Okay. Anything else?

2 MR. ROSIN: No, Your Honor. Thank you.

3 THE COURT: Oh. And if you are going to make a
4 request for reasonable fees, you should probably do that in
5 somewhat short order so that Mr. Rosin has a chance to
6 respond, and you should confer with each other in advance.
7 And, again, I'm not looking here to have one side try to get
8 blood from the other side. I'm looking for a reasonable
9 resolution of this matter.

10 MR. ROSIN: Thank you, Your Honor.

11 THE COURT: We're in recess.

12 (Case in recess at 10:41 a.m.)
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CERTIFICATE OF OFFICIAL REPORTER

I, Robert W. Paschal, Registered Merit Reporter and Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing pages are a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 23rd day of
September, 2021.

/s/ Robert W. Paschal

ROBERT W. PASCHAL, RMR, CRR
Official Court Reporter